

# Contingency Contracting

## Funding of Contingency Operations

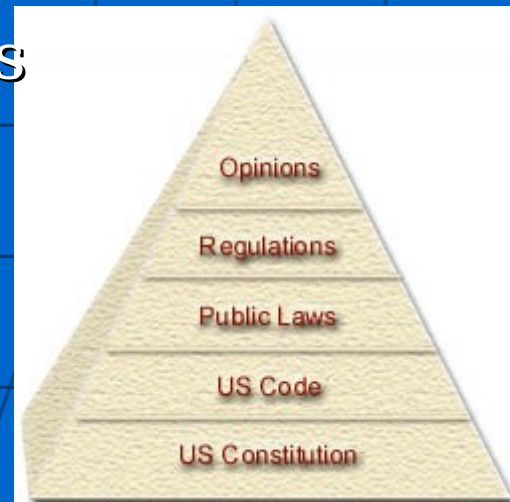


# Lesson Objectives

- Describe the various **legislative controls** imposed with the use of appropriated funds.
- Demonstrate familiarity with the **terminology** associated with fiscal law.
- Demonstrate understanding of a **funding citation**.
- Describe various **O&M, MILCON, and related sub-appropriations** used in a contingency.

# Fiscal Law

- *“No money shall be drawn from the Treasury, but in consequence of appropriations made by law.”*
- According to the Constitution, **only** Congress has the ability to provide funds to be spent by the Executive Branch (includes DoD)
- Appropriations and Authorizations Acts
- Establishes Legislative Controls



# Appropriations & Authorizations

- **Authorizations** – establishes programs and indicates the purpose Congress intends for appropriated money, and often contains restrictions on how the money may be spent
- **Appropriations** – makes money available for various purposes as indicated by Congress
- **Authorization = program**
- **Appropriation = money on that program**



# Transfer & Reprogramming

- Often required to ensure funds are the right type and amount for expenditure
- **Reprogramming** is the movement **within** an appropriation
- **Transfer** is movement from one appropriation to another
- Reprogramming is authorized, **transfer is not** - unless you have separate statutory authority... above the CCO level!



# Commitments

- Administrative reservation of funds for a particular purpose (fenced off) signed by a **Certifying Official**
- Provides the correct Funding Citation
- Those eligible to be appointed Certifying Officials include:
  - commanders**
  - deputy commanders**
  - resource managers**
  - fund holders**
  - travel authorizing officials**
  - purchase card approving officials**
- **DFAS-DE-7000.5-R**: Contracting Officers and Legal Advisors cannot be appointed Certifying Officials

# Obligations

- Quid pro Quo...a promise of money for promise of delivery
- Legally binding action that **creates a liability** for the government
- Occurs when a contract action containing funds is signed
- The time of award!
- Signed by a **“Warranted”** Contracting




# Disbursements

- Payments made by Finance or Paying Agent usually in **cash**
- Paying Agents are appointed in writing by a Commander or Finance Officer
- **CCO's** may be appointed as Paying Agents!!!
- **Considerations:**
  - Mission requirements
  - Replenishment of funds
  - Capability to safeguard
  - Exchange rate if paying in foreign currency
  - Record keeping responsibilities





# Legislative Controls

- There are three limitations on the expenditure of funds:
  - #1 - Color
  - #2 - Year
  - #3 - Amount
- 
- An agency may obligate and expend appropriations only of a proper purpose (color), within time limits applicable to the appropriation, and within amounts established by Congress

# #1-Color of Money (Purpose)

- **31 USC 1301 (a)**, prohibits spending money on objects other than those for which appropriations were made
- **Necessary Expense Rule**, a three-pronged test:
  - Logically related to the appropriation's general purpose
  - Not prohibited by law
  - Not otherwise provided for by another appropriation
- **For example:**
  - **Operations & Maintenance (O&M)** – used for the day-to-day expenses such as training exercises, deployments, civilian salaries, and operating and maintaining installations
  - Most common type of fund spent during a contingency operation



# #2-Time

- 31 USC 102 (a), appropriations are available to support “**bona fide**” needs during the **period of availability**
- Obligations must occur within the period of availability for contracts
- **For Example:**
  - O&M has a period of availability of **1 fiscal year** (1 Oct -30 Sep) since it is an annual appropriation
  - **Multiyear** Appropriations include: RDT&E – 2 years, Construction – 5 years, Procurement – 3 years

# #2-Time: Bona Fide Need

- General Rule: Need must exist at the time of award and contract must be completed within the period of availability
- Bona Fide Need for **Supplies**:
  - Considered proper if needed to support an operation in a given FY, and ordered and used in the same FY
  - Supplies ordered in one FY an activity will not use until the next FY is considered **improper unless**:
    - **Stock Level Exception**: Replenishment of stock levels, safety levels, mobilization requirements, and authorized backup stocks. **Excess** of normal usage even for a price break is **not authorized!**
    - **Lead Time Exception**: If goods/materials will not be obtainable at the time needed because of the time to order, produce, fabricate, and deliver them requires they be purchased in a prior FY



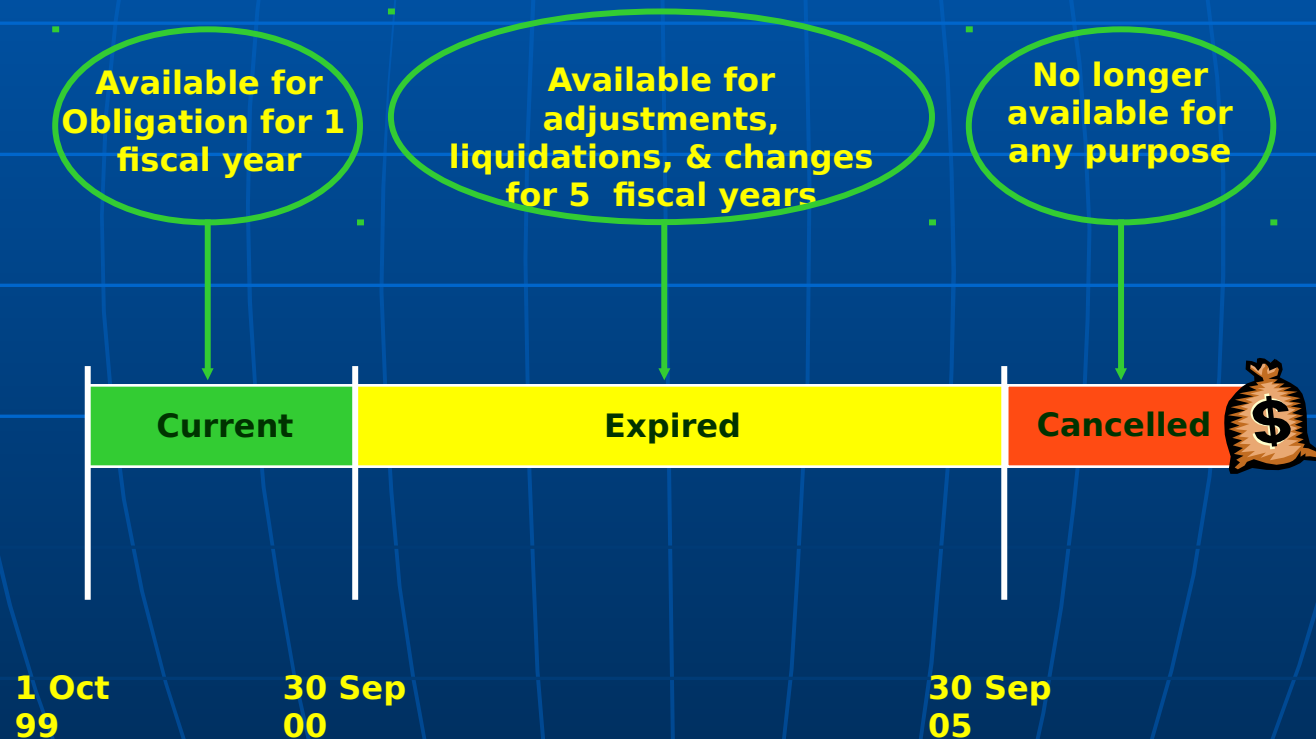
# #2-Time: Bona Fide Need Cont'd

- Bona Fide Need for **Services**:
  - Current funds are used to obtain current services, but may not use current funds to obtain future services
  - Services generally don't cross FY's **unless**:
    - **Non-severable**: By their nature cannot be divided for performance into separate FY's.
    - **Statutory**: Permits the use of current year funds to acquire services that continue over the end of an FY, **even if the services are severable**, provided the duration is **no longer than 12 months**
      - **For Example**: Utilities, Trash Disposal, etc.

# #2-Time: Lifecycle of Funds

- **Current:** money whose availability for new obligations has not yet expired under the terms for that appropriation, i.e.: O&M is 1 year
- **Expired:** money whose availability has expired for new obligations, but are available to make adjustments and liquidate previous obligations
- **Cancelled:** money that is no longer available for any purpose

# #2-Time: Lifecycle of O&M Funds



# #3-Amount

- May not spend more than is available (Certified by Comptroller)
- May not exceed regulatory limitations for the purpose
- **For Example:**
  - O&M funds may be used for the purchase of “**end items**” up to **\$100k**. Beyond the \$100k use Procurement Funds
  - O&M funds may be used for **construction up to \$750k**
  - Construction to correct life, health, or safety threatening deficiencies may use O&M **up to \$1.5m**



# #3-Amount: Future Year Funds

- In cases where future year appropriations are required, contracts must contain a provision that specifically states the contract is conditioned upon the availability of future year funds.
  - FAR 52.232-18
  - FAR 52.232-19
- 41 USC 11, Feed & Forage Allowance



# #3-Amount: Augmentation

- An action by an **agency** that increases the effective amount of funds available in an agency's appropriation
- Generally results in expending funds in excess of the amount Congress originally appropriated
- Generally prohibited, but **Congress** can enact special interagency transaction authorities
- **Not a CCO responsibility!**



# Violations of Fiscal Law

- 31 USC 1341(a), Anti-Deficiency Act:
  - Prohibits obligations in excess of funds available
  - Prohibits obligations in excess of amounts permitted by regulation
  - Prohibits obligations in advance of an appropriation
- A knowing or willful violation is punishable by a fine of \$5000, 2 years in prison, or both
- All violations are required to be investigated and reported to Congress





# Funding Citations

- Position #:

1-2

3-4

5

6-9

- ACRN + Agency + FY +  
Appropriation

- For Example:

- AA2132020...





# Funding Citations

- **ACRN (#1-2):**
  - Alphabetic and serve as a reference identifier to the line of accounting
  - A second line of accounting begins AB
- **Agency (#3-4):**
  - 17 Dept of the Navy (includes USMC)
  - 21 Dept of the Army
  - 57 Dept of the Air Force
  - 97 Dept of Defense

# Appropriation (#6-9)

|  | ARMY | NAVY/MC   | AIR FORCE | OSD   |
|--|------|-----------|-----------|-------|
| Military Personnel                                 | 2010 | 1453/1105 | 3500      | N/A   |
| Reserve Personnel                                  | 2070 | 1405/1108 | 3700      | N/A   |
| National Guard Personnel                           | 2060 | N/A       | N/A       | N/A   |
| O&M  | 2020 | 1804/1106 | 3400      | 0100  |
| O&M, Reserve                                       | 2080 | 1806/1107 | 3740      | N/A   |
| O&M, National Guard                                | 2065 | N/A       | N/A       | N/A   |
| O&M, Family Housing                                | 7025 | 7035      | 7045      | N/A   |
| Procurement (Aircraft)                             | 2031 | 1506      | 3010      | N/A   |
| Procurement (Missiles)                             | 2032 | N/A       | 3020      | N/A   |
| Procurement (Weapons & Tracked Vehicles)           | 2033 | 1507      | N/A       | N/A   |
| Procurement (Ammunition)                           | 2034 | N/A       | N/A       | N/A   |
| Shipbuilding & Conversion                          | N/A  | 1611      | N/A       | N/A   |
| Other Procurement                                  | 2035 | 1810/1109 | 3080      | 0300  |
| Research, Development, Test & Evaluation (RDT&E)   | 2040 | 1319      | 3600      | 0400  |
| Military Construction                              | 2050 | 1205      | 3300      |       |
| Family Housing Construction                        | 7020 | 7030      | 7040      |       |
| Stock Fund *(Also known as Navy Work Capital Fund) |      | *4930     | 4911      | 24921 |

# Other Funding Procedures

- Typical problem areas in determining Necessary Expense:
- Vehicle Rentals for recreational activities
- Recreational Supplies
- Entertainment
- Awards, Gifts, Coins
- Clothing
- Medical Supplies and Services
- Meals & Food (fresh fruit, vegetables, and bread)
- Legal Claims payable to host government, foreign companies, citizens, and other US Agencies and Companies
- Fuels, Oil, Grease, Gases, etc.

# Recording Obligations

- **Dependent upon contract type:**
  - FFP contracts are fully funded (except for DFARS 232.703-1)
  - **FFP w/EPA, FFIP, CPFF,CPIF,CPAF, IDIQ, REQ, & Letter**
- Contracts conditioned upon availability of funds (FAR 32.703-2)
  - use contract clause 52.232-18 for:
    - operation and maintenance
    - continuing services (e.g., rentals and utilities)
  - use contract clause 52.232-19 for:
    - indefinite-quantity or requirements contracts
- Options funded when exercised
- Subscriptions may cross over fiscal years (use contract clause 52.213-2)



# Economy Act Order

- **Contract Offloading:** Process whereby an agency requests supplies or services from another agency
- Orders issued on **DD Form 448**, Military Interdepartmental Purchase Request (MIPR)
- Each order must be supported by a Determination and Finding (D&F) demonstrating it is in the **best interest of the government**
- Comptroller functionally responsible (must coordinate with this activity)

# O&M Sub-Appropriations

- **Emergency and Extraordinary Expenses**
  - funds to pay for any emergency or extraordinary expense which cannot be anticipated or classified
- **Official Representation Funds**
  - used to maintain the standing and prestige of the US by extending courtesies to guests of the DoD
- **CINC Initiative Funds**
  - fund contingencies, selected operations, special training, humanitarian assistance, and civic assistance
- **Humanitarian and Civic Assistance**
  - set aside by Congress and may not use general O&M funds for same purpose

# MILCON

- Obligation availability of 5 years
- Unspecified Minor Construction
  - \$750K to \$1.5M per project
    - except JCS-controlled exercises overseas (must use UMC for all projects, even below \$500K, unless “truly temporary”)
- Specified Military Construction
  - projects exceeding \$1.5M
  - requires Congressional approval

# Emergency Construction

- Not actually an appropriation, but uses unobligated MILCON funds when enacted
- **Three statutes for enacting ECA:**
  - 10 USC 2808, Declaration of War and National Emergency
  - 10 USC 2803, Emergency Construction
  - 10 USC 2804, Contingency Construction



# Other Related Appropriations

- Foreign Assistance Act (FAA), 22 USC 2151-2430
- Defense Emergency Response Fund (DERF), DoD Directive 3025.1
- Stafford Disaster Relief and Emergency Assistance Act



# Foreign Funds

- **Section 607 of Foreign Assistance Act**
  - Authorizes US government to furnish commodities and services to friendly foreign countries, includes peacekeeping and disaster relief efforts on a reimbursable basis
- **UN Section 7 of United Nations Participation Act (UNPA)**
  - Authorizes US to furnish services, facilities, or other assistance when requested by the United Nations on a reimbursable basis, unless waived by the SECSTATE (after consulting with SECDEF)
- **Acquisition and Cross Servicing Agreement, NATO Mutual Support Act (Public Law 96-323)**
  - Provides DoD with simplified authority to acquire logistic support without resorting to AECA

# Humanitarian Assistance

- Provision of personnel, equipment, and supplies to promote human welfare, reduce pain and suffering, and prevent loss of life or destruction of property from the aftermath of natural or man-made disasters
- Different but similar to Contingencies!!!
- Two types of HA
  - HCA (Humanitarian and Civic Assistance)
  - FDR (Foreign Disaster Recovery)

# HCA: Constraints

- SECSTATE Approval
- Conducted in conjunction with JCS authorized military operations and exercises
- Funded from HCA-Earmarked funds or CINC Initiative Funds
- Must promote the security interests and operational readiness skills of the participants
- Must complement (not duplicate) other social or economic foreign assistance provided separately
- Not provided to foreign military organizations
- **Confined to five categories:**
  - Medical, dental, and veterinary care
  - Construction of rudimentary surface transportation systems
  - Well-drilling and construction of basic sanitation facilities
  - Rudimentary construction and repair of public facilities
  - Detecting and Clearing Land Mines



# Summary/Review

- Matching the right funds to various requirements or needs
- Understanding the limitations (purposes) of O&M, HCA, and other funds enables the contracting officer to get the right “color of money”
- Being familiar with fiscal law helps to ensure legal and proper obligation of funds; prevents abuses and Anti-Deficiency violations